



## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9803-7]**

### **Proposed Consent Decree, Clean Air Act Citizen Suit**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Clean Air Act, as amended ("CAA"), notice is hereby given of a proposed consent decree to resolve a lawsuit filed by the Center for Biological Diversity and the Center for Environmental Health ("Plaintiffs") in the United States District Court for the Northern District of California: Center for Biological Diversity, et al. v. Jackson, No. C-12-04968 JWT (N.D. CA.). On September 24, 2012, Plaintiffs filed a complaint alleging that EPA failed to make a finding of failure to submit infrastructure state implementation plans (SIPs) for Colorado, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont, and Washington with regard to the 2008 lead National Ambient Air Quality Standard (2008 lead NAAQS) by the statutory deadline established by CAA. Plaintiffs' complaint also alleged that EPA failed to take final action on the infrastructure SIP submitted by Tennessee with regard to the 2008 Lead NAAQs by the statutory deadline established by CAA. In addition, the complaint alleges that EPA failed to determine whether the Herculaneum nonattainment area, in Jefferson County, Missouri attained the 1978 lead National Ambient Air Quality Standard (1978 lead NAAQS) by its attainment date as mandated by CAA. The proposed consent decree establishes a deadline of August 15, 2013 for EPA to take action with respect to the Tennessee infrastructure SIP and the

Herculaneum nonattainment area.

**DATES:** Written comments on the proposed consent decree must be received by [insert date 30 days after publication date].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2013-0236, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-1222; fax number (202) 564-5601; email address: [orlin.david@epa.gov](mailto:orlin.david@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed consent decree.**

The proposed consent decree would resolve a lawsuit filed by Plaintiffs seeking to compel the Agency to satisfy certain mandatory duties under the Clean Air Act. The proposed consent decree provides that no later than August 15, 2013, EPA shall sign for publication in the Federal Register a notice of EPA's action approving, disapproving, or

approving in part and disapproving in part the infrastructure SIP for the 2008 lead NAAQS submitted by Tennessee. In addition, the proposed consent decree provides that no later than August 15, 2013, EPA shall sign for publication in the Federal Register a notice of EPA's determination whether the Herculaneum nonattainment area, in Jefferson County, Missouri attained the 1978 lead NAAQS by its attainment date, unless as of that date, EPA issues a determination that it has received from Missouri a nonattainment area SIP for the 2008 lead NAAQS for the Herculaneum nonattainment area which meets the requirements of 40 C.F.R. 51.103(a) or EPA signs for publication in the Federal Register a notice finding that Missouri has failed to submit a complete nonattainment area SIP for the 2008 lead NAAQS for the Herculaneum nonattainment area. The proposed consent decree also notes that on February 15, 2013, EPA signed a notice making certain findings that the States of Hawaii, Illinois, Massachusetts, New Jersey, Oregon, Vermont and Washington had failed to submit complete infrastructure SIPs for the 2008 lead NAAQS, and noted that as of February 14, 2013, Colorado, Maryland, Oklahoma, Pennsylvania, and South Dakota had submitted complete infrastructure SIPs for the 2008 lead NAAQS.

Following signature of each final action described in the proposed consent decree, EPA shall promptly deliver notice of such action to the Office of the Federal Register for review and publication in the Federal Register. After EPA fulfills its obligations under the consent decree, the consent decree provides that this case shall be dismissed with prejudice.

The proposed consent decree also states that that the consent decree can be modified by the parties, or by the court following a motion by a party and a response

thereto. In addition, the parties agree to seek to resolve informally Plaintiffs' claim for litigation costs pursuant to 42 U.S.C. 7604(d), but the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How Can I Get A Copy Of the Consent Decree?*

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC- 2013-0236) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use the [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 8, 2013.

Lorie J. Schmidt,  
Associate General Counsel.

[FR Doc. 2013-09292 Filed 04/18/2013 at 8:45 am; Publication Date: 04/19/2013]